IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

WP(C).No. 22223 of 2007(U)

AGAINST THE ORDER IN EP 181/96 IN
OS.97/1989 of PRL.SUB COURT,TRIVANDRUM

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PETITIONER:

MOHAN DAS, S/O.RAGHAVAN, RANI VIHAR,
PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.J.HARIKUMAR
SRI.HARIKUMAR.S.

RESPONDENT:

N.MUMTHAZ, MUMTHAZ NILAYAM,
ATTIPRA VILLAGE, THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) 22223/07

Appendix

Petitioner's Exts:

Ext.P1 true copy of the decree in OS 97/1989 dated 29.6.1991 of the Principal Sub Court, Thiruvananthapuram.
Ext.P2 true copy of the order dated 20.10.2003 in EP 181/ 1996 in OS 97/1989 of the Principal Sub Court,Thiruvananthapuram.
ExtP3 true copy of the order in EA 1080/2003 in EP 181 of 1996 dated 20.2.2004 of the Principal Sub Court,Thiruvananthapuram.
Ext.P4 true copy of EA 335 of 2004 in EP 181 of 1996 dated 22.3.2004 filed by the respondent.
Ext.P5 true copy of the objection dated 9.8.2004 filed by the petitioner in EA 335 of 2004.
Ext.P6 true copy of the order dated 4.2.2005 in EA 335/04 of the Principal Sub Court, Thiruvananthapuram.
Ext.P7 true copy of the judgment dated 6.7.2005 in WP(C) 11704/2005.
Ext.P8 true copy of the order dated 25.7.2005 in EP 181/1996.
Ext.P9 true copy of the review petition dated 28.7.2005 filed on 17.10.2005 numbered as EA 985 of 2005.
Ext.P10 true copy of the judgment dated 1.4.06 on EA 985/2005.
Ext.P11 true copy of the order dated 28.8.2006 in EA 985/2005.
Ext.P12 true copy of the order dated 22.9.06 in EA 985/2005.
Ext.P13 true copy of the Review Petition dated 18.10.2006 numbered as EA 1353 of 2006.
Ext.P14 true copy of EA 1621 of 2006 dated 6.12.2006.
Ext.P15 true copy of the order dated 31.5.2007 on EA 1353 of 2006.
Ext.P16 true copy of the order dated 31.5.2007 on EA 1621 of 2006.

M.N.Krishnan, J.

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W.P(C).No.22223 of 2007

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Dated this the 2nd day of November, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside the orders passed in Exts.P10, P12 and P15. Respondent is served with notice. He did not claim it and therefore it was held as sufficient service. The only contention that requires determination is whether it is the Execution Petition that is to be restored or execution application filed for restoration of the Execution Petition is to be restored.

2. A perusal of the judgment of this Court rendered in W.P. (C) No.11704 of 2005 would reveal that an Execution Petition was filed as E.P.No.181 of 1996 in O.S.No.97 of 1989. When it was dismissed, an application to restore the Execution Petition was filed as E.A.No.1080 of 2003. By virtue of an order in E.A.No.335 of 2004, the court below restored the E.A.No.1080 of 2003. This Court directed the court below to consider whether there are sufficient grounds to restore the Execution Petition and dispose of E.A.No.1080 of 2003 in accordance with law. On 25.7.2005, as usual, the decree holder did not present himself and the court dismissed the Execution Petition. That order itself is erroneous for the reason that what this Court has directed to consider was the restoration application. Now in the impugned

order, the court had restored the Execution Petition. It is incorrect. By payment of cost the court can only restore E.A.No.1080 of 2003, which is an application filed for restoring the Execution Petition. The court below has lost sight of this and it allowed the Execution Petition itself which will run contrary to the direction given by this Court under Ext.P7 judgment.

3. Therefore, I modify the orders in Exts.P10, P12 and P15 and hold that the order of the Executing Court only restores the application for restoration of the Execution Petition, namely, E.A.No.1080 of 2003. The court shall consider whether there are sufficient grounds to restore the Execution Petition and pass a considered order as directed in Ext.P7 and dispose of the matter in accordance with law.

M.N.Krishnan,
Judge.

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